

ASSEMBLY BILL

No. 2186

Introduced by Assembly Member Lowenthal

February 20, 2014

An act to amend Section 1370 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 2186, as introduced, Lowenthal. Defendants: competency.

Existing law provides that if a defendant in a criminal proceeding is found mentally incompetent, the trial or judgment shall be suspended until the person becomes mentally competent. Existing law provides that the court shall order that the mentally incompetent defendant be delivered by the sheriff to a state hospital for the care and treatment of the mentally disordered, or to any other available public or private treatment facility approved by the community program director that will promote the defendant's speedy restoration to mental competence, or placed on outpatient status as specified. Existing law further specifies commitment proceedings to include circumstances for the voluntary and involuntary administration of antipsychotic medication.

This bill would require the court to use opinions developed by examining medical professionals during the inquiry determining mental competence, when the court is determining if the defendant lacks the capacity to make decisions regarding the administration of antipsychotic medication.

Existing law provides that if the treating psychiatrist certifies that antipsychotic medication has become medically necessary and appropriate for the defendant, antipsychotic medication may be administered to the defendant for a maximum of 21 days, provided,

however, that, within 72 hours of the certification, the defendant is provided a medication review hearing before an administrative law judge to be conducted at the facility where the defendant is receiving treatment.

This bill would authorize a court to extend the administrative law judge's order authorizing involuntary medication for 14 days beyond the 21-day certification period upon a finding of good cause. The bill would authorize the district attorney, county counsel, or representative of any facility where a defendant found incompetent to stand trial is committed, to petition the court for an order to administer involuntary medication.

Existing law provides that an order by the court authorizing involuntary medication of the defendant is valid for one year. Existing law requires the court to review the order 6 months after it is made to determine if the grounds for the authorization remain. Existing law requires the medical director of the state hospital or other treatment facility to which the defendant is confined to make a written report to the court and the community program director for the county or region of commitment, or a designee, concerning the defendant's progress toward recovery of mental competence, within 90 days of commitment, and thereafter, at 6-month intervals or until the defendant becomes mentally competent.

This bill would require the court to review its order authorizing involuntary medication in conjunction with the 6-month intervals described above. The bill would provide that within 60 days of the expiration of the one year involuntary medication order, the facility where the defendant is being treated may petition the committing court for a one year renewal, and would require the petition to include the basis for involuntary medication. The bill would require notice of the petition to the defendant, the defendant's attorney, and the district attorney, and would require the court to hear and determine whether the defendant continues to meet the criteria for involuntary medication. The bill would require the 90-day and 6-month reports described above regarding progress towards competence to also address whether the administration of antipsychotic medication remains necessary.

By imposing additional duties on local prosecuting agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1370 of the Penal Code is amended to
2 read:
3 1370. (a) (1) (A) If the defendant is found mentally
4 competent, the criminal process shall resume, the trial on the
5 offense charged shall proceed, and judgment may be pronounced.
6 (B) If the defendant is found mentally incompetent, the trial or
7 judgment shall be suspended until the person becomes mentally
8 competent.
9 (i) In the meantime, the court shall order that the mentally
10 incompetent defendant be delivered by the sheriff to a state hospital
11 for the care and treatment of the mentally disordered, or to any
12 other available public or private treatment facility, including a
13 local county jail treatment facility, approved by the community
14 program director that will promote the defendant's speedy
15 restoration to mental competence, or placed on outpatient status
16 as specified in Section 1600.
17 (ii) However, if the action against the defendant who has been
18 found mentally incompetent is on a complaint charging a felony
19 offense specified in Section 290, the prosecutor shall determine
20 whether the defendant previously has been found mentally
21 incompetent to stand trial pursuant to this chapter on a charge of
22 a Section 290 offense, or whether the defendant is currently the
23 subject of a pending Section 1368 proceeding arising out of a
24 charge of a Section 290 offense. If either determination is made,
25 the prosecutor shall so notify the court and defendant in writing.
26 After this notification, and opportunity for hearing, the court shall
27 order that the defendant be delivered by the sheriff to a state
28 hospital or other secure treatment facility for the care and treatment
29 of the mentally disordered unless the court makes specific findings
30 on the record that an alternative placement would provide more

1 appropriate treatment for the defendant and would not pose a
2 danger to the health and safety of others.

3 (iii) If the action against the defendant who has been found
4 mentally incompetent is on a complaint charging a felony offense
5 specified in Section 290 and the defendant has been denied bail
6 pursuant to subdivision (b) of Section 12 of Article I of the
7 California Constitution because the court has found, based upon
8 clear and convincing evidence, a substantial likelihood that the
9 person's release would result in great bodily harm to others, the
10 court shall order that the defendant be delivered by the sheriff to
11 a state hospital for the care and treatment of the mentally disordered
12 unless the court makes specific findings on the record that an
13 alternative placement would provide more appropriate treatment
14 for the defendant and would not pose a danger to the health and
15 safety of others.

16 (iv) The clerk of the court shall notify the Department of Justice
17 in writing of any finding of mental incompetence with respect to
18 a defendant who is subject to clause (ii) or (iii) for inclusion in his
19 or her state summary criminal history information.

20 (C) Upon the filing of a certificate of restoration to competence,
21 the court shall order that the defendant be returned to court in
22 accordance with Section 1372. The court shall transmit a copy of
23 its order to the community program director or a designee.

24 (D) A defendant charged with a violent felony may not be
25 delivered to a state hospital or treatment facility pursuant to this
26 subdivision unless the state hospital or treatment facility has a
27 secured perimeter or a locked and controlled treatment facility,
28 and the judge determines that the public safety will be protected.

29 (E) For purposes of this paragraph, "violent felony" means an
30 offense specified in subdivision (c) of Section 667.5.

31 (F) A defendant charged with a violent felony may be placed
32 on outpatient status, as specified in Section 1600, only if the court
33 finds that the placement will not pose a danger to the health or
34 safety of others. If the court places a defendant charged with a
35 violent felony on outpatient status, as specified in Section 1600,
36 the court must serve copies of the placement order on defense
37 counsel, the sheriff in the county where the defendant will be
38 placed and the district attorney for the county in which the violent
39 felony charges are pending against the defendant.

1 (2) Prior to making the order directing that the defendant be
2 confined in a state hospital or other treatment facility or placed on
3 outpatient status, the court shall proceed as follows:

4 (A) The court shall order the community program director or a
5 designee to evaluate the defendant and to submit to the court within
6 15 judicial days of the order a written recommendation as to
7 whether the defendant should be required to undergo outpatient
8 treatment, or committed to a state hospital or to any other treatment
9 facility. No person shall be admitted to a state hospital or other
10 treatment facility or placed on outpatient status under this section
11 without having been evaluated by the community program director
12 or a designee. The community program director or designee shall
13 evaluate the appropriate placement for the defendant between a
14 state hospital or a local county jail treatment facility based upon
15 guidelines provided by the State Department of State Hospitals.
16 If a local county jail treatment facility is selected, the State
17 Department of State Hospitals shall provide treatment at the county
18 jail treatment facility and reimburse the county jail treatment
19 facility for the reasonable costs of the bed during the treatment.
20 The six-month limitation in Section 1369.1 shall not apply to
21 individuals deemed incompetent to stand trial who are being treated
22 to restore competency within a county jail treatment facility
23 pursuant to this section.

24 (B) The court shall hear and determine whether the defendant
25 lacks capacity to make decisions regarding the administration of
26 antipsychotic ~~medication~~, *medication*. *The court shall utilize*
27 *opinions prepared pursuant to subdivision (a) of Section 1369* and
28 shall proceed as follows:

29 (i) The court shall hear and determine whether any of the
30 following is true:

31 (I) The defendant lacks capacity to make decisions regarding
32 antipsychotic medication, the defendant's mental disorder requires
33 medical treatment with antipsychotic medication, and, if the
34 defendant's mental disorder is not treated with antipsychotic
35 medication, it is probable that serious harm to the physical or
36 mental health of the patient will result. Probability of serious harm
37 to the physical or mental health of the defendant requires evidence
38 that the defendant is presently suffering adverse effects to his or
39 her physical or mental health, or the defendant has previously
40 suffered these effects as a result of a mental disorder and his or

1 her condition is substantially deteriorating. The fact that a
2 defendant has a diagnosis of a mental disorder does not alone
3 establish probability of serious harm to the physical or mental
4 health of the defendant.

5 (II) The defendant is a danger to others, in that the defendant
6 has inflicted, attempted to inflict, or made a serious threat of
7 inflicting substantial physical harm on another while in custody,
8 or the defendant had inflicted, attempted to inflict, or made a
9 serious threat of inflicting substantial physical harm on another
10 that resulted in his or her being taken into custody, and the
11 defendant presents, as a result of mental disorder or mental defect,
12 a demonstrated danger of inflicting substantial physical harm on
13 others. Demonstrated danger may be based on an assessment of
14 the defendant's present mental condition, including a consideration
15 of past behavior of the defendant within six years prior to the time
16 the defendant last attempted to inflict, inflicted, or threatened to
17 inflict substantial physical harm on another, and other relevant
18 evidence.

19 (III) The people have charged the defendant with a serious crime
20 against the person or property, involuntary administration of
21 antipsychotic medication is substantially likely to render the
22 defendant competent to stand trial, the medication is unlikely to
23 have side effects that interfere with the defendant's ability to
24 understand the nature of the criminal proceedings or to assist
25 counsel in the conduct of a defense in a reasonable manner, less
26 intrusive treatments are unlikely to have substantially the same
27 results, and antipsychotic medication is in the patient's best medical
28 interest in light of his or her medical condition.

29 (ii) If the court finds any of the conditions described in clause
30 (i) to be true, the court shall issue an order authorizing the treatment
31 ~~facility to involuntarily administer~~ *involuntary administration of*
32 antipsychotic medication to the defendant when and as prescribed
33 by the defendant's treating psychiatrist *at any facility housing the*
34 *defendant for purposes of this section*. The court shall not order
35 involuntary administration of psychotropic medication under
36 subclause (III) of clause (i) unless the court has first found that the
37 defendant does not meet the criteria for involuntary administration
38 of psychotropic medication under subclause (I) of clause (i) and
39 does not meet the criteria under subclause (II) of clause (i).

1 (iii) In all cases, the treating hospital, facility, or program may
2 administer medically appropriate antipsychotic medication
3 prescribed by a psychiatrist in an emergency as described in
4 subdivision (m) of Section 5008 of the Welfare and Institutions
5 Code.

6 (iv) If the court has determined that the defendant has the
7 capacity to make decisions regarding antipsychotic medication,
8 and if the defendant, with advice of his or her counsel, consents,
9 the court order of commitment shall include confirmation that
10 antipsychotic medication may be given to the defendant as
11 prescribed by a treating psychiatrist pursuant to the defendant's
12 consent. The commitment order shall also indicate that, if the
13 defendant withdraws consent for antipsychotic medication, after
14 the treating psychiatrist complies with the provisions of
15 subparagraph (C), the defendant shall be returned to court for a
16 hearing in accordance with subparagraphs (C) and (D) regarding
17 whether antipsychotic medication shall be administered
18 involuntarily.

19 (v) If the court has determined that the defendant has the
20 capacity to make decisions regarding antipsychotic medication
21 and if the defendant, with advice from his or her counsel, does not
22 consent, the court order for commitment shall indicate that, after
23 the treating psychiatrist complies with the provisions of
24 subparagraph (C), the defendant shall be returned to court for a
25 hearing in accordance with subparagraphs (C) and (D) regarding
26 whether antipsychotic medication shall be administered
27 involuntarily.

28 (vi) Any report made pursuant to paragraph (1) of subdivision
29 (b) shall include a description of any antipsychotic medication
30 administered to the defendant and its effects and side effects,
31 including effects on the defendant's appearance or behavior that
32 would affect the defendant's ability to understand the nature of
33 the criminal proceedings or to assist counsel in the conduct of a
34 defense in a reasonable manner. During the time the defendant is
35 confined in a state hospital or other treatment facility or placed on
36 outpatient status, either the defendant or the people may request
37 that the court review any order made pursuant to this subdivision.
38 The defendant, to the same extent enjoyed by other patients in the
39 state hospital or other treatment facility, shall have the right to

1 contact the patients' rights advocate regarding his or her rights
2 under this section.

3 (C) If the defendant consented to antipsychotic medication as
4 described in clause (iv) of subparagraph (B), but subsequently
5 withdraws his or her consent, or, if involuntary antipsychotic
6 medication was not ordered pursuant to clause (v) of subparagraph
7 (B), and the treating psychiatrist determines that antipsychotic
8 medication has become medically necessary and appropriate, the
9 treating psychiatrist shall make efforts to obtain informed consent
10 from the defendant for antipsychotic medication. If informed
11 consent is not obtained from the defendant, and the treating
12 psychiatrist is of the opinion that the defendant lacks capacity to
13 make decisions regarding antipsychotic medication based on the
14 conditions described in subclause (I) or (II) of clause (i) of
15 subparagraph (B), the treating psychiatrist shall certify whether
16 the lack of capacity and any applicable conditions described above
17 exist. That certification shall contain an assessment of the current
18 mental status of the defendant and the opinion of the treating
19 psychiatrist that involuntary antipsychotic medication has become
20 medically necessary and appropriate.

21 (D) (i) If the treating psychiatrist certifies that antipsychotic
22 medication has become medically necessary and appropriate
23 pursuant to subparagraph (C), antipsychotic medication may be
24 administered to the defendant for not more than 21 days, provided,
25 however, that, within 72 hours of the certification, the defendant
26 is provided a medication review hearing before an administrative
27 law judge to be conducted at the facility where the defendant is
28 receiving treatment. The treating psychiatrist shall present the case
29 for the certification for involuntary treatment and the defendant
30 shall be represented by an attorney or a patients' rights advocate.
31 The attorney or patients' rights advocate shall be appointed to meet
32 with the defendant no later than one day prior to the medication
33 review hearing to review the defendant's rights at the medication
34 review hearing, discuss the process, answer questions or concerns
35 regarding involuntary medication or the hearing, assist the
36 defendant in preparing for the hearing and advocating for his or
37 her interests at the hearing, review the panel's final determination
38 following the hearing, advise the defendant of his or her right to
39 judicial review of the panel's decision, and provide the defendant
40 with referral information for legal advice on the subject. The

defendant shall also have the following rights with respect to the medication review hearing:

(I) To being given timely access to the defendant's records.

(II) To be present at the hearing, unless the defendant waives that right.

(III) To present evidence at the hearing.

(IV) To question persons presenting evidence supporting involuntary medication.

(V) To make reasonable requests for attendance of witnesses on the defendant's behalf.

(VI) To a hearing conducted in an impartial and informal manner.

(ii) If the administrative law judge determines that the defendant either meets the criteria specified in subclause (I) of clause (i) of subparagraph (B), or meets the criteria specified in subclause (II) of clause (i) of subparagraph (B), then antipsychotic medication may continue to be administered to the defendant for the 21-day certification period. Concurrently with the treating psychiatrist's certification, the treating psychiatrist shall file a copy of the certification and a petition with the court for issuance of an order to administer antipsychotic medication beyond the 21-day certification period. For purposes of this subparagraph, the treating psychiatrist shall not be required to pay or deposit any fee for the filing of the petition or other document or paper related to the petition.

(iii) If the administrative law judge disagrees with the certification, medication may not be administered involuntarily until the court determines that antipsychotic medication should be administered pursuant to this section.

(iv) The court shall provide notice to the prosecuting attorney and to the attorney representing the defendant, and shall hold a hearing, no later than 18 days from the date of the certification, to determine whether antipsychotic medication should be ordered beyond the certification period.

(v) If, as a result of the hearing, the court determines that antipsychotic medication should be administered beyond the certification period, the court shall issue an order authorizing the administration of that medication.

(vi) The court shall render its decision on the petition and issue its order no later than three calendar days after the hearing and, in

1 any event, no later than the expiration of the 21-day certification
2 period.

3 (vii) *The court may extend the administrative law judge's order*
4 *for 14 days beyond the 21-day certification period upon a finding*
5 *of good cause.*

6 (viii) *The district attorney, county counsel, or representative of*
7 *any facility where a defendant found incompetent to stand trial is*
8 *committed may petition the court for an order to administer*
9 *involuntary medication pursuant to the criteria set forth in*
10 *subclauses (II) and (III) of clause (i) of subparagraph (B). The*
11 *order is reviewable as provided in paragraph (7).*

12 (3) When the court orders that the defendant be confined in a
13 state hospital or other public or private treatment facility, the court
14 shall provide copies of the following documents which shall be
15 taken with the defendant to the state hospital or other treatment
16 facility where the defendant is to be confined:

17 (A) The commitment order, including a specification of the
18 charges.

19 (B) A computation or statement setting forth the maximum term
20 of commitment in accordance with subdivision (c).

21 (C) A computation or statement setting forth the amount of
22 credit for time served, if any, to be deducted from the maximum
23 term of commitment.

24 (D) State summary criminal history information.

25 (E) Any arrest reports prepared by the police department or
26 other law enforcement agency.

27 (F) Any court-ordered psychiatric examination or evaluation
28 reports.

29 (G) The community program director's placement
30 recommendation report.

31 (H) Records of any finding of mental incompetence pursuant
32 to this chapter arising out of a complaint charging a felony offense
33 specified in Section 290 or any pending Section 1368 proceeding
34 arising out of a charge of a Section 290 offense.

35 (4) When the defendant is committed to a treatment facility
36 pursuant to clause (i) of subparagraph (B) of paragraph (1) or the
37 court makes the findings specified in clause (ii) or (iii) of
38 subparagraph (B) of paragraph (1) to assign the defendant to a
39 treatment facility other than a state hospital or other secure
40 treatment facility, the court shall order that notice be given to the

1 appropriate law enforcement agency or agencies having local
2 jurisdiction at the site of the placement facility of any finding of
3 mental incompetence pursuant to this chapter arising out of a
4 charge of a Section 290 offense.

5 (5) When directing that the defendant be confined in a state
6 hospital pursuant to this subdivision, the court shall select the
7 hospital in accordance with the policies established by the State
8 Department of State Hospitals.

9 (6) (A) If the defendant is committed or transferred to a state
10 hospital pursuant to this section, the court may, upon receiving the
11 written recommendation of the medical director of the state hospital
12 and the community program director that the defendant be
13 transferred to a public or private treatment facility approved by
14 the community program director, order the defendant transferred
15 to that facility. If the defendant is committed or transferred to a
16 public or private treatment facility approved by the community
17 program director, the court may, upon receiving the written
18 recommendation of the community program director, transfer the
19 defendant to a state hospital or to another public or private
20 treatment facility approved by the community program director.
21 In the event of dismissal of the criminal charges before the
22 defendant recovers competence, the person shall be subject to the
23 applicable provisions of the Lanterman-Petris-Short Act (Part 1
24 commencing with Section 5000) of Division 5 of the Welfare and
25 Institutions Code). Where either the defendant or the prosecutor
26 chooses to contest either kind of order of transfer, a petition may
27 be filed in the court for a hearing, which shall be held if the court
28 determines that sufficient grounds exist. At the hearing, the
29 prosecuting attorney or the defendant may present evidence bearing
30 on the order of transfer. The court shall use the same standards as
31 are used in conducting probation revocation hearings pursuant to
32 Section 1203.2.

33 Prior to making an order for transfer under this section, the court
34 shall notify the defendant, the attorney of record for the defendant,
35 the prosecuting attorney, and the community program director or
36 a designee.

37 (B) If the defendant is initially committed to a state hospital or
38 secure treatment facility pursuant to clause (ii) or (iii) of
39 subparagraph (B) of paragraph (1) and is subsequently transferred
40 to any other facility, copies of the documents specified in paragraph

(3) shall be taken with the defendant to each subsequent facility to which the defendant is transferred. The transferring facility shall also notify the appropriate law enforcement agency or agencies having local jurisdiction at the site of the new facility that the defendant is a person subject to clause (ii) or (iii) of subparagraph (B) of paragraph (1).

(7) (A) An order by the court authorizing involuntary medication of the defendant shall be valid for no more than one year. The court shall review the order ~~six months after the order was made in conjunction with the six month interval progress reports pursuant to paragraph (1) of subdivision (b)~~ to determine if the grounds for the authorization remain. In the review, the court shall consider the reports of the treating psychiatrist or psychiatrists and the defendant's patients' rights advocate or attorney. The court may require testimony from the treating psychiatrist or psychiatrists and the patients' rights advocate or attorney, if necessary. The court may continue the order authorizing involuntary medication for up to another six months, or vacate the order, or make any other appropriate order.

(B) *Within 60 days of the expiration of the one year involuntary medication order, the facility where the defendant is being treated may petition the committing court for a one year renewal, subject to the same conditions and requirements as in subparagraph (A). The petition shall include the basis for involuntary medication set forth in clause (i) of subparagraph (B) of paragraph (2). Notice of the petition shall be provided to the defendant, the defendant's attorney, and the district attorney. The court shall hear and determine whether the defendant continues to meet the criteria set forth in clause (i) of subparagraph (B) of paragraph (2).*

(b) (1) Within 90 days of a commitment made pursuant to subdivision (a), the medical director of the state hospital or other treatment facility to which the defendant is confined shall make a written report to the court and the community program director for the county or region of commitment, or a designee, concerning the defendant's progress toward recovery of mental competence *and whether the administration of antipsychotic medication remains necessary.* Where the defendant is on outpatient status, the outpatient treatment staff shall make a written report to the community program director concerning the defendant's progress toward recovery of mental competence. Within 90 days of

1 placement on outpatient status, the community program director
2 shall report to the court on this matter. If the defendant has not
3 recovered mental competence, but the report discloses a substantial
4 likelihood that the defendant will regain mental competence in the
5 foreseeable future, the defendant shall remain in the state hospital
6 or other treatment facility or on outpatient status. Thereafter, at
7 six-month intervals or until the defendant becomes mentally
8 competent, where the defendant is confined in a treatment facility,
9 the medical director of the hospital or person in charge of the
10 facility shall report in writing to the court and the community
11 program director or a designee regarding the defendant's progress
12 toward recovery of mental competence *and whether the*
13 *administration of antipsychotic medication remains necessary.*
14 Where the defendant is on outpatient status, after the initial 90-day
15 report, the outpatient treatment staff shall report to the community
16 program director on the defendant's progress toward recovery,
17 and the community program director shall report to the court on
18 this matter at six-month intervals. A copy of these reports shall be
19 provided to the prosecutor and defense counsel by the court. If the
20 report indicates that there is no substantial likelihood that the
21 defendant will regain mental competence in the foreseeable future,
22 the committing court shall order the defendant to be returned to
23 the court for proceedings pursuant to paragraph (2) of subdivision
24 (c). The court shall transmit a copy of its order to the community
25 program director or a designee.

26 (2) Where the court has issued an order authorizing the treating
27 facility to involuntarily administer antipsychotic medication to the
28 defendant, the reports made at six-month intervals concerning the
29 defendant's progress toward regaining competency shall also
30 consider the issue of involuntary medication. Each report shall
31 include, but is not limited to, all the following:

32 (A) Whether or not the defendant has the capacity to make
33 decisions concerning antipsychotic medication.

34 (B) If the defendant lacks capacity to make decisions concerning
35 antipsychotic medication, whether the defendant risks serious harm
36 to his or her physical or mental health if not treated with
37 antipsychotic medication.

38 (C) Whether or not the defendant presents a danger to others if
39 he or she is not treated with antipsychotic medication.

1 (D) Whether the defendant has a mental illness for which
2 medications are the only effective treatment.

3 (E) Whether there are any side effects from the medication
4 currently being experienced by the defendant that would interfere
5 with the defendant's ability to collaborate with counsel.

6 (F) Whether there are any effective alternatives to medication.

7 (G) How quickly the medication is likely to bring the defendant
8 to competency.

9 (H) Whether the treatment plan includes methods other than
10 medication to restore the defendant to competency.

11 (I) A statement, if applicable, that no medication is likely to
12 restore the defendant to competency.

13 (3) After reviewing the reports, the court shall determine whether
14 or not grounds for the order authorizing involuntary administration
15 of antipsychotic medication still exist and shall do one of the
16 following:

17 (A) If the original grounds for involuntary medication still exist,
18 the order authorizing the treating facility to involuntarily administer
19 antipsychotic medication to the defendant shall remain in effect.

20 (B) If the original grounds for involuntary medication no longer
21 exist, and there is no other basis for involuntary administration of
22 antipsychotic medication, the order for the involuntary
23 administration of antipsychotic medication shall be vacated.

24 (C) If the original grounds for involuntary medication no longer
25 exist, and the report states that there is another basis for involuntary
26 administration of antipsychotic medication, the court shall set a
27 hearing within 21 days to determine whether the order for the
28 involuntary administration of antipsychotic medication shall be
29 vacated or whether a new order for the involuntary administration
30 of antipsychotic medication shall be issued. The hearing shall
31 proceed as set forth in subparagraph (B) of paragraph (2) of
32 subdivision (a).

33 (4) Any defendant who has been committed or has been on
34 outpatient status for 18 months and is still hospitalized or on
35 outpatient status shall be returned to the committing court where
36 a hearing shall be held pursuant to the procedures set forth in
37 Section 1369. The court shall transmit a copy of its order to the
38 community program director or a designee.

39 (5) If it is determined by the court that no treatment for the
40 defendant's mental impairment is being conducted, the defendant

1 shall be returned to the committing court. The court shall transmit
2 a copy of its order to the community program director or a
3 designee.

4 (6) At each review by the court specified in this subdivision,
5 the court shall determine if the security level of housing and
6 treatment is appropriate and may make an order in accordance
7 with its determination. If the court determines that the defendant
8 shall continue to be treated in the state hospital or on an outpatient
9 basis, the court shall determine issues concerning administration
10 of antipsychotic medication, as set forth in subparagraph (B) of
11 paragraph (2) of subdivision (a).

12 (c) (1) At the end of three years from the date of commitment
13 or a period of commitment equal to the maximum term of
14 imprisonment provided by law for the most serious offense charged
15 in the information, indictment, or misdemeanor complaint,
16 whichever is shorter, a defendant who has not recovered mental
17 competence shall be returned to the committing court. The court
18 shall notify the community program director or a designee of the
19 return and of any resulting court orders.

20 (2) Whenever any defendant is returned to the court pursuant
21 to paragraph (1) or (4) of subdivision (b) or paragraph (1) of this
22 subdivision and it appears to the court that the defendant is gravely
23 disabled, as defined in subparagraph (B) of paragraph (1) of
24 subdivision (h) of Section 5008 of the Welfare and Institutions
25 Code, the court shall order the conservatorship investigator of the
26 county of commitment of the defendant to initiate conservatorship
27 proceedings for the defendant pursuant to Chapter 3 (commencing
28 with Section 5350) of Part 1 of Division 5 of the Welfare and
29 Institutions Code. Any hearings required in the conservatorship
30 proceedings shall be held in the superior court in the county that
31 ordered the commitment. The court shall transmit a copy of the
32 order directing initiation of conservatorship proceedings to the
33 community program director or a designee, the sheriff and the
34 district attorney of the county in which criminal charges are
35 pending, and the defendant's counsel of record. The court shall
36 notify the community program director or a designee, the sheriff
37 and district attorney of the county in which criminal charges are
38 pending, and the defendant's counsel of record of the outcome of
39 the conservatorship proceedings.

1 (3) If a change in placement is proposed for a defendant who
2 is committed pursuant to subparagraph (B) of paragraph (1) of
3 subdivision (h) of Section 5008 of the Welfare and Institutions
4 Code, the court shall provide notice and an opportunity to be heard
5 with respect to the proposed placement of the defendant to the
6 sheriff and the district attorney of the county in which criminal
7 charges are pending.

8 (4) Where the defendant is confined in a treatment facility, a
9 copy of any report to the committing court regarding the
10 defendant's progress toward recovery of mental competence shall
11 be provided by the committing court to the prosecutor and to the
12 defense counsel.

13 (d) The criminal action remains subject to dismissal pursuant
14 to Section 1385. If the criminal action is dismissed, the court shall
15 transmit a copy of the order of dismissal to the community program
16 director or a designee.

17 (e) If the criminal charge against the defendant is dismissed,
18 the defendant shall be released from any commitment ordered
19 under this section, but without prejudice to the initiation of any
20 proceedings that may be appropriate under the
21 Lanterman-Petris-Short Act, Part 1 (commencing with Section
22 5000) of Division 5 of the Welfare and Institutions Code.

23 (f) As used in this chapter, "community program director" means
24 the person, agency, or entity designated by the State Department
25 of State Hospitals pursuant to Section 1605 of this code and Section
26 4360 of the Welfare and Institutions Code.

27 (g) For the purpose of this section, "secure treatment facility"
28 shall not include, except for state mental hospitals, state
29 developmental centers, and correctional treatment facilities, any
30 facility licensed pursuant to Chapter 2 (commencing with Section
31 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter
32 3.2 (commencing with Section 1569) of, Division 2 of the Health
33 and Safety Code, or any community board and care facility.

34 (h) Nothing in this section shall preclude a defendant from filing
35 a petition for habeas corpus to challenge the continuing validity
36 of an order authorizing a treatment facility or outpatient program
37 to involuntarily administer antipsychotic medication to a person
38 being treated as incompetent to stand trial.

39 ~~(i) This section shall become operative on July 1, 2012.~~

1 SEC. 2. If the Commission on State Mandates determines that
2 this act contains costs mandated by the state, reimbursement to
3 local agencies and school districts for those costs shall be made
4 pursuant to Part 7 (commencing with Section 17500) of Division
5 4 of Title 2 of the Government Code.

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